



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
ASSOCIATION FOR LOCAL)
TELECOMMUNICATION SERVICES)
)
Request for Clarification of the Commission's)
Rules Regarding Reciprocal Compensation for)
Information Service Provider Traffic)
_____)

CCB/CPD 97-30

CC Docket 96-98

**REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC.,
DOBSON WIRELESS, INC. AND US XCHANGE, INC.**

Hyperion Telecommunications, Inc. ("Hyperion"), Dobson Wireless, Inc. ("Dobson"), and US Xchange, Inc. ("USX") (together the "Parties"), by their undersigned counsel, jointly submit these reply comments in support of the request for clarification filed with the Commission on June 20, 1997 by the Association for Local Telecommunications Services ("ALTS"). The Commission should grant the ALTS request and rule that its *Local Competition Order*¹ does not affect the local regulatory status of traffic transported and terminated to information service providers ("ISPs") (which includes Internet service providers). Therefore, under the current regulatory framework, such traffic must continue to be treated as local traffic and CLECs must receive reciprocal compensation for the transport and termination all local calls to ISPs.

¹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC Docket No. 96-98, at para. 155 (rel. August 8, 1996) ("*Local Competition Order*").

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The Parties have a significant interest in this proceeding and applaud ALTS for seeking clarification on this issue. The Parties currently serve or anticipate serving information service providers, particularly ISPs.^{2/} Therefore, compensation for traffic transported and terminated to ISPs by CLECs is of substantial financial importance to these Parties. The Parties urge the Commission to provide clarification that CLEC's will receive compensation for terminating local traffic to ISPs.^{3/} Such a determination would be consistent with the Act, prior FCC and State Commission decisions, and recent ILEC practices.^{4/}

It is well established that ISPs purchase local exchange service from local exchange carriers for Internet dial-up services provided to their end user customers. This connection is typically provided by a seven digit local telephone number. It is also undisputed that the incumbent LECs

^{2/} For example, USX not only anticipates serving ISP customers, but itself represents the ISP's interest having recently acquired an ISP. Dobson similarly anticipates serving ISP customers in its service area.

^{3/} Any carrier terminating calls to an ISP incurs costs in terminating such calls (which are the same costs incurred in terminating calls to any other end user). Since the ILECs control most of the originating traffic within its territory, CLECs would be forced to terminate these calls without compensation. CLECs would be unable to recover the costs of terminating the traffic which would possible threaten their ability to remain in business.

^{4/} Further, Parties note that, to a large extent, the issue raised by the ILECs comes down to simple economics. As stated in this proceeding, ILECs have informed CLECs throughout the country that they do not intend to pay reciprocal compensation to CLECs when ILEC customers terminate local traffic to ISPs that are customers of a CLEC. In other words, ILECs do not mind completing local calls to ISPs, they simply protest that they should not have to compensate CLECs for terminating those calls. This despite the fact that in many localities ILECs charge their customers local per minute rates to complete a call to an ISP (or any other local location).

provide local exchange service to their own ISP customers and that they treat this traffic as local for the purposes of interstate separations. Therefore, by the very conduct of CLECs, ILECs, and ISPs in purchasing the service, the essence of this end user traffic to the ISP point of presence is local in nature. Consequently, it should be undisputed that such local traffic is subject to reciprocal compensation arrangements under either state-approved interconnection agreements or state-approved local exchange tariffs. All LECs terminating such calls must be fairly and reciprocally compensated for the cost of terminating such calls.

The local treatment of such traffic is consistent with the findings of this Commission in the *Universal Service Order*^{2/} and the *Non-Accounting Safeguards Order*.^{4/} In both Orders, the provision of services entitled to support from the Universal Service Fund and the provision of services for which an RBOC must establish a separate affiliate for the purposes of Section 272, the Commission determined that Internet services are reached by placing a local call to the Internet service provider, which is separate and distinguishable from any subsequent Internet transmission.^{2/}

Nothing in the Commission's *Local Competition Order* alters this view. Nowhere in the *Local Competition Order* is the issue of transport and termination of traffic to Internet service

^{2/} *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (rel. May 8, 1997) ("*Universal Service Order*").

^{4/} *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking (rel. Dec. 24, 1996) ("*Non-Accounting Safeguards Order*").

^{2/} *Universal Service Order*, paras. 83, 788-789; *Non-Accounting Safeguards Order*, para. 120.

providers addressed. None of the commenters have identified any language in the *Local Competition Order* that provides for an alternative form of local exchange service that would not be subject to reciprocal compensation based upon the identity of the called party. As a result, like all other local traffic, traffic terminated to information service providers is subject to reciprocal compensation.

Furthermore, the Commission has an ongoing proceeding which addresses a multitude of issues concerning information services including the implications of usage of the public switched telecommunications network for obtaining access to the Internet.^{8/} If the current regulatory regime is to be reformed, such changes will likely be the result of the Internet NOI. Until then, the Parties urge the Commission to respond to ALTS by clarifying that nothing in its *Local Competition Order* altered the unmistakable conclusion that local traffic that is delivered by a local exchange carrier to an ISP is no different than other local traffic delivered to any other purchaser of local exchange service.

Since the initial comments were filed, the Parties recognize that the United States Court of Appeals for the Eighth Circuit rendered its decision in *Iowa Utilities Board v. Federal Communications Commission*, Nos. 96-3321 *et al.* That decision vacated a number of the

^{8/} *Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Dockets 96-262, 94-1, 91-213 and 96-263, *Notice of Inquiry* (rel. December 24, 1996) ("Internet NOI"). The Commission has remarked that this proceeding "will give us an opportunity to consider the implications of information services more broadly, and to craft proposals for a subsequent NPRM that are sensitive to the complex economic, technical, and legal questions raised in this area." *In the Matter of Access Charge Reform*, First Report and Order, CC Docket No. 96-262, at para. 348 (rel. May 17, 1997).

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Commission's rules implementing the local competition elements of the Telecommunications Act on the grounds that the Commission exceeded its jurisdiction with respect to pricing of intrastate telecommunications services. That decision is not applicable to this proceeding. In this proceeding the Commission is not seeking to regulate local telecommunications services. Instead, it is simply clarifying what was said (or more accurately, what was not said) in its *Local Competition Order*.

The ALTS request should be granted, and the Commission should rule that nothing in its *Local Competition Order* requires a change in the regulatory treatment of traffic terminated to information service providers. Local traffic to information service providers should continue to be treated as local traffic and receive reciprocal compensation for the transport and termination of these local calls.

Respectfully submitted,



Dana Frix

Douglas G. Bonner

SWIDLER & BERLIN, CHARTERED

3000 K Street, N.W., Suite 300

Washington, D.C. 20007

(202) 424-7500 (telephone)

(202) 424-7645 (fax)

Counsel for Hyperion Telecommunications, Inc.,
Dobson Wireless, Inc. and US Xchange, Inc.

Dated: July 31, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July 1997, copies of REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC., DOBSON WIRELESS, INC. AND US XCHANGE, INC. were hand delivered to those parties marked with an asterisk. All others were served by first class mail.

*Wanda Harris (2 copies)
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

*Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

*International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20037

Richard J. Metzger, General Counsel
ALTS 1200 19th Street, N.W., Suite 560
Washington, D.C. 20036

Kecia Boney
Lisa B. Smith
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Lawrence G. Malone
General Counsel
New York State Department of
Public Service
Three Empire State Plaza
Albany, NY 12223-1350
Attn: Susan Narkewicz

Teresa Marrero
Teleport Communications Group, Inc.
Senior Regulatory Counsel - Federal
Two Teleport Drive

Staten Island, NY 10311

Wendy S. Bluemling
The Southern New England Telephone
Company
227 Church Street
New Haven, CT 06510

Mark C. Rosenblum
Ava B. Kleinman
Seth S. Gross
AT&T Corp.
295 North Maple Avenue, Room 3252J1
Basking Ridge, NJ 07920

Christopher J. Wilson
Christine M. Strick
Frost & Jacobs LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202

Mark A. Stachiw
Vice President, Senior Counsel and
Secretary
AirTouch Paging
12221 Merit Drive, Suite 800
Dallas, Texas 75251

Ronald L. Plessner
Mark J. O'Connor
Piper & Marbury L.L.P.
1200 19th Street, N.W., Suite 700
Washington, D.C. 20036

Christopher W. Savage
Robert G. Scott
Cole, Raywid & Braverman, L.L.P.

Suite 200
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Gary L. Phillips
Counsel for Ameritech
1401 H Street, N.W. #1020
Washington, D.C. 20005

Mary McDermott / Linda Kent
Keith Townsend / Hance Haney
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Donna N. Lampert / Christopher J. Harvie
James J. Valentino
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004

Cheryl A. Tritt / Charles H. Kennedy
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888

Werner K. Hartenberger
J. G. Harrington
Laura H. Phillips
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W., Suite
800

Washington, D.C. 20036

Brad E. Mutschelknaus
Marieann Z. Machida
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Glenn B. Manishin
Christine A. Mailloux
Blumenfeld & Cohen - Technology Law
Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036

Raymond G. Bender, Jr.
J. G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, Suite 800
Washington, D.C. 20036

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404

Leon M. Kestenbaum
Jay C. Keithley
Norina T. Moy
1850 M St., N.W., Suite 1110
Washington, D.C. 20036


Kathleen L. Greenan